

108TH CONGRESS
1ST SESSION

S. 412

To amend the Balanced Budget Act of 1997 to extend and modify the reimbursement of State and local funds expended for emergency health services furnished to undocumented aliens.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2003

Mr. KYL (for himself, Mr. MCCAIN, Mr. DOMENICI, Mrs. FEINSTEIN, Mr. CORNYN, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Balanced Budget Act of 1997 to extend and modify the reimbursement of State and local funds expended for emergency health services furnished to undocumented aliens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Local Emergency
5 Health Services Reimbursement Act of 2003”.

1 **SEC. 2. FEDERAL REIMBURSEMENT OF EMERGENCY**
 2 **HEALTH SERVICES FURNISHED TO UNDOCU-**
 3 **MENTED ALIENS.**

4 Section 4723 of the Balanced Budget Act of 1997
 5 (8 U.S.C. 1611 note) is amended to read as follows:

6 **“SEC. 4723. FEDERAL REIMBURSEMENT OF EMERGENCY**
 7 **HEALTH SERVICES FURNISHED TO UNDOCU-**
 8 **MENTED ALIENS.**

9 “(a) TOTAL AMOUNT AVAILABLE FOR ALLOT-
 10 MENT.—There is appropriated, out of any funds in the
 11 Treasury not otherwise appropriated, \$1,450,000,000 for
 12 each of fiscal years 2004 through 2008, for the purpose
 13 of making allotments under this section to States de-
 14 scribed in paragraph (1) or (2) of subsection (b). Funds
 15 appropriated under the preceding sentence shall remain
 16 available until expended.

17 “(b) STATE ALLOTMENTS.—

18 “(1) BASED ON PERCENTAGE OF UNDOCU-
 19 MENTED ALIENS.—

20 “(A) IN GENERAL.—Out of the amount
 21 appropriated under subsection (a) for each fis-
 22 cal year, the Secretary shall use \$957,000,000
 23 of such amount to make allotments for each
 24 such fiscal year in accordance with subpara-
 25 graph (B).

“(B) FORMULA.—The amount of the allotment for each State for a fiscal year shall be equal to the product of—

“(i) the total amount available for allotments under this paragraph for the fiscal year; and

“(ii) the percentage of undocumented aliens residing in the State with respect to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

“(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

“(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use \$493,000,000 of such amount to make allotments for each such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

“(B) DETERMINATION OF ALLOTMENTS.—
The amount of the allotment for each State described in subparagraph (A) for a fiscal year

1 shall bear the same ratio to the total amount
2 available for allotments under this paragraph
3 for the fiscal year as the ratio of the number
4 of undocumented alien apprehensions in the
5 State in the fiscal year bears to the total of
6 such numbers for all such States for such fiscal
7 year.

8 “(C) DATA.—For purposes of this para-
9 graph, the highest number of undocumented
10 alien apprehensions for a fiscal year shall be
11 based on the 4 most recent quarterly apprehen-
12 sion rates for undocumented aliens in such
13 States, as reported by the Immigration and
14 Naturalization Service.

15 “(3) RULE OF CONSTRUCTION.—Nothing in
16 this section shall be construed as prohibiting a State
17 that is described in both of paragraphs (1) and (2)
18 from receiving an allotment under both paragraphs
19 for a fiscal year.

20 “(c) USE OF FUNDS.—

21 “(1) AUTHORITY TO MAKE PAYMENTS.—From
22 the allotments made for a State under subsection (b)
23 for a fiscal year, the Secretary shall pay directly to
24 local governments, hospitals, or other providers lo-
25 cated in the State (including providers of services re-

1 ceived through an Indian Health Service facility
2 whether operated by the Indian Health Service or by
3 an Indian tribe or tribal organization) that provide
4 uncompensated emergency health services furnished
5 to undocumented aliens during that fiscal year, and
6 to the State, such amounts (subject to the total
7 amount available from such allotments) as the local
8 governments, hospitals, providers, or State dem-
9 onstrate were incurred for the provision of such
10 services during that fiscal year.

11 “(2) LIMITATION ON STATE USE OF FUNDS.—
12 Funds paid to a State from allotments made under
13 subsection (b) for a fiscal year may only be used for
14 making payments to local governments, hospitals, or
15 other providers for costs incurred in providing emer-
16 gency health services to undocumented aliens or for
17 State costs incurred with respect to the provision of
18 emergency health services to such aliens.

19 “(3) INCLUSION OF COSTS INCURRED WITH RE-
20 SPECT TO CERTAIN ALIENS.—Uncompensated emer-
21 gency health services furnished to aliens who have
22 been allowed to enter the United States for the sole
23 purpose of receiving emergency health services may
24 be included in the determination of costs incurred by

1 a State, local government, hospital, or other provider
 2 with respect to the provision of such services.

3 “(d) APPLICATIONS; ADVANCE PAYMENTS; REAL-
 4 LOTMENT OF UNUSED FUNDS.—

5 “(1) DEADLINE FOR ESTABLISHMENT OF AP-
 6 PPLICATION PROCESS.—

7 “(A) IN GENERAL.—Not later than July
 8 31, 2003, the Secretary shall establish a proc-
 9 ess under which States, local governments, hos-
 10 pitals, or other providers located in the State
 11 may apply for payments from allotments made
 12 under subsection (b) for a fiscal year for un-
 13 compensated emergency health services fur-
 14 nished to undocumented aliens during that fis-
 15 cal year.

16 “(B) INCLUSION OF MEASURES TO COM-
 17 BAT FRAUD.—The Secretary shall include in
 18 the process established under subparagraph (A)
 19 measures to ensure that fraudulent payments
 20 are not made from the allotments determined
 21 under subsection (b) or from amounts reallocated
 22 under paragraph (3).

23 “(2) ADVANCE PAYMENT; RETROSPECTIVE AD-
 24 JUSTMENT.—The process established under para-
 25 graph (1) shall allow for making payments under

1 this section for each quarter of a fiscal year on the
 2 basis of advance estimates of expenditures submitted
 3 by applicants for such payments and such other in-
 4 vestigation as the Secretary may find necessary, and
 5 for making reductions or increases in the payments
 6 as necessary to adjust for any overpayment or un-
 7 derpayment for prior quarters.

8 “(3) REALLOTMENT OF UNUSED FUNDS.—

9 “(A) IN GENERAL.—With respect to allot-
 10 ments made under subsection (b) for a fiscal
 11 year, the amount of any allotment to a State
 12 for a fiscal year that the Secretary determines
 13 will not be expended during that fiscal year or
 14 the succeeding fiscal year shall be available for
 15 reallotment during the second succeeding fiscal
 16 year, on such date as the Secretary may deter-
 17 mine, to other States with allotments under
 18 that subsection that the Secretary determines
 19 will use such excess amounts during that sec-
 20 ond succeeding fiscal year.

21 “(B) DETERMINATION OF REALLOT-
 22 MENTS.—Reallotments under subparagraph (A)
 23 shall be made in the same manner as allotments
 24 are determined under paragraphs (1) and (2) of
 25 subsection (b) but only with respect to those

1 States that the Secretary determines qualify for
 2 a reallocation for a fiscal year under that sub-
 3 paragraph.

4 “(C) TREATMENT.—Any amount reallocated
 5 under subparagraph (A) to a State is deemed
 6 to be part of its allotment under subsection (b)
 7 for the fiscal year in which the reallocation oc-
 8 curs.

9 “(e) DEFINITIONS.—In this section:

10 “(1) HOSPITAL.—The term ‘hospital’ has the
 11 meaning given such term in section 1861(e) of the
 12 Social Security Act (42 U.S.C. 1395x(e)).

13 “(2) INDIAN TRIBE; TRIBAL ORGANIZATION.—
 14 The terms ‘Indian tribe’ and ‘tribal organization’
 15 have the meanings given such terms in section 4 of
 16 the Indian Health Care Improvement Act.

17 “(3) PROVIDER.—The term ‘provider’ includes
 18 a physician, any other health care professional li-
 19 censed under State law, and any other entity that
 20 furnishes emergency health services, including ambu-
 21 lance services.

22 “(4) SECRETARY.—The term ‘Secretary’ means
 23 the Secretary of Health and Human Services.

24 “(5) STATE.—The term ‘State’ means the 50
 25 States and the District of Columbia.

1 “(f) ENTITLEMENT.—This section constitutes budget
2 authority in advance of appropriations Acts and rep-
3 resents the obligation of the Federal Government to pro-
4 vide for the payment of amounts provided under this sec-
5 tion.”.

